

clared, leaving the respondents, if they have any claim to make in respect of any part of the purchase-money, to seek it in any way they may be advised.—See *Roy Koor v. Juswunt Koor* (1), and *Toolsee Singh v. Pandey Bhyro Deen* (2).

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We therefore modify the decree of the lower appellate Court by restoring that of the Court of first instance with costs.

Appeal allowed.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

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SHAFKAT-UN-NISSA (PLAINTIFF) v. SHIB SAHAI AND OTHERS (DEFENDANTS).
Act X of 1877 (Civil Procedure Code), s. 43.

J had a right to share in a certain estate, as an heir to her father, and also as an heir to her brother. She transferred such right by sale to *H*. *H* sued *S*, who had acquired the whole estate by purchase at sales in execution of decrees against the other heirs of *J*'s brother, for *J*'s share as one of her brother's heirs in such estate, and obtained a decree. *H* then sued *S* for *J*'s share as one of her father's heirs in such estate. *Held* that *H* was debarred from bringing the second suit by the provisions of s. 43 of Act X of 1877.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Pandit *Bishambhar Nath* and *Shuikh Maula Bakhsh*, for the appellant.

Babus Oprokash Chandar Mukarji and *Jogindro Nath Chaudhri*, for the respondents.

The judgment of the High Court (BRODHURST, J., and TYRRELL, J.,) was delivered by

TYRRELL, J.—Shah Sahib-ud-din died in 1874, leaving as heirs to his property movable and immovable, in Meerut and in Moradabad, three persons, his two widows, and his sister. They are Banno Begam, Umrão Begam, and Jheoni Begam. Their names were duly recorded in respect of the Moradabad villages, but in the Meerut district the record was made in favour of Banno Begam,

* Second Appeal, No. 459 of 1881, from a decree of H. G. Keene, Esq., Judge of Meerut, dated the 24th December, 1880, reversing a decree of Rai Bakhtawar Singh, Subordinate Judge of Meerut, dated the 8th November, 1880.

(1) N.-W. P. S. D. A. Rep., 1864,
vol. ii, p. 576.

(2) N.-W. P. S. D. A. Rep., 1864,
vol. ii, p. 617.

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Umrao Begam, and Tajammul Husain, a son of Banno Begam, out of wedlock with Sahib-ud-din. The Meerut estate of the latter consisted of five biswas in mauza Deoli, being four biswas in his own right and one biswa as "*asba*" of his brother. Banno Begam died in 1876, and her son Tajammul Husain was recorded as her heir. Meantime one I-hurat-un-nissa had obtained in a Moradabad Court decrees against Umrao Begam, which were transferred for execution to the Meerut district. Under these decrees two-thirds of the Deoli estate, being the "rights and interests therein of Tajammul Husain, Umrao Begam, and Banno Begam" were sold at auction on the 20th February, 1877, to Shib Sahai, the principal respondent before us. But in 1874 Tajammul Husain had raised money from Ram Sarup and Bhim Sein on the security of the Deoli estate, and again in 1878 he mortgaged to Shib Sahai all his rights and interests therein. Jheoni Begam in Moradabad was not privy to any of these transactions. Ram Sarup and Bhim Sein got a decree against Tajammul Husain for their debt, and brought to auction all "his rights and interests in the Deoli estate," which were purchased by Shib Sahai on the 20th September, 1878. Thus two distinct and separate alienations, made, if not by the voluntary action of the heirs recorded in Meerut, at least as the direct consequence of their dealings with the Sahib-ud-din estate, operated to transfer to Shib Sahai the whole five biswas on the 20th February, 1877, and the 20th September, 1878.

But Jheoni Begam of Moradabad, though a stranger to these alienations of her property, was not oblivious of her rights in the Deoli estate as heiress to her father Kutb-ud-din, and residuary of her sole surviving brother Sahib-ud-din at and after his death in 1874. She disposed of all these rights by sale to Shafkat-un-nissa, the appellant before us, under two deeds, one of the 11th March, 1874, conveying six out eight sahams in the estate of her brother Sahib-ud-din, being her inheritance from him, and two sahams inherited from her father Kutb-ud-din. These shares amount together to about five biswas of the ancestral property. The appellant before us sued on the March deed in February, 1879, and obtained a decree (13th January, 1880,) for her six sahams out of eight in Sahib-ud-din's Deoli estate against the present principal respondent Shib Sahai. The appellant has now brought the present suit for recovery from

the same Shib Sahai and from Mumtaz-un-nissa of the property covered by the second sale-deed dated May, 1874.

The above recital of facts is necessary for the proper appreciation of the question whether the second, that is to say, the present, suit is barred by the provisions of s. 43 of the Civil Procedure Code.

It is plain that the plaintiff's right of action, to wit, her inheritance from her father and from her brother, had accrued to her before she brought the first suit. It is indisputable that the parties to both actions are substantially the same, the alienees of Sahib-ud-din's heirs being in fact Shib Sahai alone in his own and his brother's names; and it must be admitted that as regards this alienee the plaintiff's common cause of action in both suits arose from the circumstances that the possession of a part of her inheritance was wrongfully withheld. It cannot affect the principle embodied in the rule of s. 43 that the plaintiff's title in respect of the whole inheritance happened to have a double root. This circumstance would not alter the wholeness of her claim as against the alienee of the false heirs arising out of her one cause of action against him, which was nothing but his possession on a bad title to her wrong. It is possible that, if the portions of the inheritance coming to the plaintiff through her father and brother respectively had been defined and ascertained, and if the first transfer had purported to alienate the one portion so ascertained and specified, the other similarly purporting to affect the other known share, the Court might see its way to a decision not adverse to the present suit. Under such circumstances it might have been held that each alienation constituted a distinct cause of action, and that it was therefore not obligatory upon the plaintiff to make each separate purchaser a party to her first suit upon pain of forfeiting all future right of suit against them by reason of such omission. But it has been shown that these circumstances do not subsist in the former and in the present action of the appellant: but that on the contrary she had in February, 1879, one cause of action against Shib Sahai and Jiwan Singh in respect of her whole claim, which she has chosen to split up into two claims, in all essential respects identical, against the same parties; and she must therefore be held to be debarred from bringing the present action by the rule of the

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second clause of s. 43, Act X of 1877. In this view of the law as applicable to the peculiar facts of this case, the decree of the lower appellate Court is affirmed, and this appeal is dismissed with costs.

Appeal dismissed.

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Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

BHOLAI (DEFENDANT) v. THE RAJAH OF BANSI (PLAINTIFF).*

Land-holder and Tenant—Planting trees—Ejectment.

A tenant planted trees on one of the plots of land comprising his holding, an act which rendered him liable to ejectment. He paid rent, not in respect of each plot of land, but in respect of the entire holding. *Held* that he was liable to ejectment, not merely from the plot on which he had planted the trees, but from his entire holding.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case for the trial of the issue set out in such order.

Lala Lalta Prasad and Pandit Ajudhia Nath, for the appellant.

Munshi Hanuman Prasad, Maulvi Mehdi Hasan, and Shaikh Maula Bakhsh, for the respondent.

The High Court (TYRRELL, J., and DUTHOIT, J.,) made the following order of remand:—

DUTHOIT, J.—This is an appeal from a decree of the Judge of Gorakhpur, reversing a decree of an Assistant Collector of the first class (Mr. J. H. Carter), by which a suit brought by the Raja of Bansi against Bholai, Kurmi, under s. 93 (b) of Act XVIII. of 1873 was dismissed. The plaintiff alleged that the defendant, a tenant with right of occupancy, had forfeited his rights, and was liable to ejectment, by reason of his having, in Asadh, 1286 fasli, on plot No. 1177 (17 biswas in extent), being part of his holding, (i) planted trees of various kinds: (ii) dug a well: (iii) built a house. For the defence the planting of any trees upon the land referred to, at the time stated, and the construction of a well proper were denied; it was alleged that all, as regarded trees, that the defendant

* Second Appeal, No. 108 of 1881, from a decree of R. Saunders, Esq., Judge of Gorakhpur, dated the 29th November, 1880, reversing a decree of J. H. Carter, Esq., Assistant Collector of the first class, Basti, dated the 17th July, 1880.